

ROY COOPER  
Governor

MICHAEL S. REGAN  
Secretary

LINDA CULPEPPER  
Director



NORTH CAROLINA  
Environmental Quality

January 21, 2020

DWR # 20180765 v3  
Jackson County

Daniel Communities  
Attn: Owen Schultz  
1525 Highway 107 South  
Cashiers NC 28717

**Subject: Approval of Individual 401 Water Quality Certification with Additional Conditions**  
High Hampton Redevelopment Project  
USACE Action ID. No. SAW-2017-02281

Dear Mr. Schultz:

Attached hereto is a copy of Certification No. WQC004212 issued to Mr. Owen Schultz and Daniel Communities, dated January 21, 2020. Please note that you should get any other federal, state or local permits before proceeding with the subject project, including those required by (but not limited to) Sediment and Erosion Control, Non-Discharge, and Water Supply Watershed regulations.

This approval and its conditions are final and binding unless contested. This Certification can be contested as provided in Articles 3 and 4 of General Statute 150B by filing a written petition for an administrative hearing to the Office of Administrative Hearings (hereby known as OAH) **within sixty (60) calendar days**.

A petition form may be obtained from the OAH at <http://www.ncoah.com/> or by calling the OAH Clerk's Office at (919) 431-3000 for information. A petition is considered filed when the original and one (1) copy along with any applicable OAH filing fee is received in the OAH during normal office hours (Monday through Friday between 8:00am and 5:00pm, excluding official state holidays).

The petition may be faxed to the OAH at (919) 431-3100, provided the original and one copy of the petition along with any applicable OAH filing fee is received by the OAH within five (5) business days following the faxed transmission.

Mailing address for the OAH:



North Carolina Department of Environmental Quality | Division of Water Resources  
512 North Salisbury Street | 1617 Mail Service Center | Raleigh, North Carolina 27699-1617  
919/107-4000

*If sending via US Postal Service:*

Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh, NC 27699-6714

*If sending via delivery service (UPS, FedEx, etc):*

Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh, NC 27609-6285

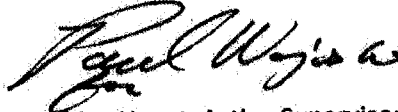
One (1) copy of the petition must also be served to DEQ:

William F. Lane, General Counsel  
Department of Environmental Quality  
1601 Mail Service Center  
Raleigh, NC 27699-1601

Unless such a petition is filed, this Certification shall be final and binding.

This Certification completes the review of the Division under section 401 of the Clean Water Act and 15A NCAC 02H .0500. Contact Sue Homewood at 336-776-9693 or [sue.homewood@ncdenr.gov](mailto:sue.homewood@ncdenr.gov) if you have any questions or concerns.

Sincerely,



Mac Haupt, Acting Supervisor  
401 & Buffer Permitting Branch

cc: Clement Riddle, ClearWater Environmental Consultants, Inc. (via email)  
David Brown, USACE Asheville Regulatory Field Office (via email)  
Byron Hamstead, USFWS (via email)  
Andrea Leslie, NCWRC (via email)  
Todd Bowers, EPA, (via email)  
DWR ARO 401 file  
DWR 401 & Buffer Permitting Branch file

Filename: 20180765v3HighHampton(Jackson)\_401\_IC.docx

# **NORTH CAROLINA 401 WATER QUALITY CERTIFICATION**

**CERTIFICATION #WQC004212** is issued in conformity with the requirements of Section 401, Public Laws 92-500 and 95-217 of the United States and subject to North Carolina's Regulations in 15 NCAC 02H .0500, to Mr. Owen Schultz and Daniel Communities, who have authorization for the impacts listed below, as described within your application received by the N.C. Division of Water Resources (Division) on July 2, 2019 and subsequent information on August 20, 2019, September 17, 2019, October 8, 2019, October 17, 2019 and December 11, 2019, and by Public Notice issued by the U. S. Army Corps of Engineers and received by the Division on July 19, 2019.

The State of North Carolina certifies that this activity will not violate the applicable portions of Sections 301, 302, 303, 306, 307 of the Public Laws 92-500 and PL 95-217 if conducted in accordance with the application, the supporting documentation, and conditions hereinafter set forth.

**This approval requires you to follow the conditions listed in the Certification below.**

## **Conditions of Certification:**

1. The following impacts are hereby approved. No other impacts are approved, including incidental impacts. [15A NCAC 02H .0506(b) and/or (c)]

Type of Impact	Amount Approved (units) Permanent	Amount Approved (units) Temporary
<b>Stream</b>		
Stream Impact #3	55 (linear feet)	0 (linear feet)
Stream Impact #4	53 (linear feet)	0 (linear feet)
Stream Impact #7	68 (linear feet)	0 (linear feet)
Stream Impact #8	30 (linear feet)	0 (linear feet)
Stream Impact #9	11 (linear feet)	0 (linear feet)
Stream Impact #10	66 (linear feet)	0 (linear feet)
Stream Impact #11	55 (linear feet)	0 (linear feet)
Stream Impact #14 (After the Fact)	60 (linear feet)	0 (linear feet)
Stream Impact #17	23 (linear feet)	0 (linear feet)
Stream Impact #19	75 (linear feet)	0 (linear feet)
Stream Impact #20	74 (linear feet)	0 (linear feet)
Stream Impact #21	75 (linear feet)	0 (linear feet)
Stream Impact #22	382 (linear feet)	0 (linear feet)
Stream Impact #23	146 (linear feet)	0 (linear feet)
Stream Impact #24	36 (linear feet)	0 (linear feet)
Stream Impact #UC1	0 (linear feet)	20 (linear feet)
Stream Impact #UC2	0 (linear feet)	20 (linear feet)
Stream Impact #UC3	0 (linear feet)	20 (linear feet)
Stream Impact #UC4	0 (linear feet)	20 (linear feet)

Stream Impact #UC5	0 (linear feet)	20 (linear feet)
Stream Impact #UC6	0 (linear feet)	20 (linear feet)
Stream Impact #UC7	0 (linear feet)	20 (linear feet)
Stream Impact #UC8	0 (linear feet)	20 (linear feet)
Stream Impact #UC9	0 (linear feet)	20 (linear feet)
Stream Impact #UC10	0 (linear feet)	20 (linear feet)
Streambank Stabilization adjacent to Hole 2 & 4	150 (linear feet)	0 (linear feet)
Streambank Stabilization adjacent to Bridge #3	150 (linear feet)	0 (linear feet)
<b>404/401 Wetlands</b>		
Wetland Impact #1	0.003 (acres)	0 (acres)
Wetland Impact #2	0.008 (acres)	0 (acres)
Wetland Impact #6	0.005 (acres)	0 (acres)
Wetland Impact #7	0.001 (acres)	0 (acres)
Wetland Impact #8	0.044 (acres)	0 (acres)
Wetland Impact #9 (After the Fact)	0.007 (acres)	0 (acres)
Wetland Impact #11	0.065 (acres)	0 (acres)
Wetland Impact #14 (After the Fact)	0.046 (acres)	0 (acres)
Wetland Impact #15 (After the Fact)	0.011 (acres)	0 (acres)
Wetland Impact #17	0.005 (acres)	0 (acres)
Wetland Impact #18	0.006 (acres)	0 (acres)
Wetland Impact #20	0.098 (acres)	0 (acres)
Wetland Impact #21	0.039 (acres)	0 (acres)
Wetland Impact #22	0.004 (acres)	0 (acres)
Wetland Impact #23	0.001 (acres)	0 (acres)
Wetland Impact #24	0.006 (acres)	0 (acres)
Wetland Impact #25	0.014 (acres)	0 (acres)
Wetland Impact #26	0.006 (acres)	0 (acres)
Wetland Impact #27	0.002 (acres)	0 (acres)
Wetland Impact #28	0.012 (acres)	0 (acres)
Wetland Impact #29 (After the Fact)	0.008 (acres)	0 (acres)
Wetland Impact #30 (After the Fact)	0.004 (acres)	0 (acres)
Open Waters	0.15 (acres)	0 (acres)

2. This approval is for the purpose and design described in your application and as described in the Public Notice. The plans and specifications for this project are incorporated by reference and are an enforceable part of the Certification. Any modifications to the project require notification to DWR and may require an application submittal to DWR with the appropriate fee. [15A NCAC 02H .0501 and .0502]
3. Mitigation must be provided for the proposed impacts as specified in the table below. The Division has received an acceptance letter from the NC Division of Mitigation Services (DMS) to meet this mitigation requirement. Until the DMS receives and clears your payment, and proof of payment has been provided to this Office, no impacts specified in this Authorization Certificate shall occur. For accounting purposes, this Authorization Certificate authorizes payment to the DMS to meet the following compensatory mitigation requirement [15A NCAC 02H .0506 (b)(6)]:

	Compensatory Mitigation Required	River and Sub-basin Number
Stream	1,209 (feet)	Savannah 030601021

4. The Permittee shall maintain compliance with DEQ State Stormwater Permit No. SW1190301 or any modified approvals therein. [15A NCAC 02B .0506(b)(5)]
5. In order to protect downstream uses for Trout Waters a requirement of this Certification is that with the requested exception of Stream Impacts #11 and #19, any work conducted within the stream may not occur between the dates of October 15 through April 15. [15A NCAC 02H .0506 (b)(2) and 15A NCAC 04B .0125]
6. A minimum release flow of 0.475 cubic feet per second, in accordance with Division of Energy Mineral and Land Resources approval letter JACKS-002 issued January 10, 2020, shall be maintained in the receiving stream downstream of Hampton Lake at all times. To meet this requirement, a cold-water gate valve will remain in an open position at all times. The following requirements shall apply to irrigation withdrawals from the lake: [15A NCAC 02B .0211 (2)]

Lake water level elevation	Irrigation allowance
When water is flowing over the dam	57,000 gpd
Below 1 foot below the top of dam	28,500 gpd
Below 2 feet below the top of dam	None

7. After the Fact stream impacted #14 (culvert installation) shall be restored as proposed in the UT2 Enhancement Plan & Profile dated Revised September 26, 2019 and received by the Division on October 8, 2019. [15A NCAC 02H .0501 and .0502] In order to protect downstream uses for Trout Waters this restoration work may not occur between the dates of October 15 through April 15. [15A NCAC 02H .0506 (b)(2) and 15A NCAC 04B .0125]



8. All retained jurisdictional wetlands and waters, within the residential areas of the project shall be preserved in open space in order to assure compliance with NC Wetland Rules (15A NCAC 02H .0500). [15A NCAC 02H .0501 and .0502]
9. No waste, spoil, solids, or fill of any kind shall occur in wetlands or waters beyond the footprint of the impacts (including temporary impacts) as authorized under this Certification. [15A NCAC 02H .0501 and .0502]
10. All construction activities shall be performed and maintained in full compliance with G.S. Chapter 113A Article 4 (Sediment and Pollution Control Act of 1973).
11. Sediment and erosion control measures shall not be placed in wetlands or waters except within the footprint of temporary or permanent impacts authorized under this Certification. [15A NCAC 02H .0501 and .0502]
12. Erosion control matting that incorporates plastic mesh and/or plastic twine shall not be used along streambanks or within wetlands. [15A NCAC 02B .0201]
13. An NPDES Construction Stormwater Permit (NCG010000) is required for construction projects that disturb one (1) or more acres of land. The NCG010000 Permit allows stormwater to be discharged during land disturbing construction activities as stipulated in the conditions of the permit. If the project is covered by this permit, full compliance with permit conditions including the erosion & sedimentation control plan, inspections and maintenance, self-monitoring, record keeping and reporting requirements is required. [15A NCAC 02H .0506(b)(5) and (c)(5)]
14. All work in or adjacent to streams shall be conducted so that the flowing stream does not come in contact with the disturbed area. Approved best management practices from the most current version of the *NC Sediment and Erosion Control Manual*, or the *NC DOT Construction and Maintenance Activities Manual*, such as sandbags, rock berms, cofferdams, and other diversion structures shall be used to minimize excavation in flowing water. [15A NCAC 02H .0506(b)(3) and (c)(3)]
15. Culverts shall be designed and installed in such a manner that the original stream profiles are not altered and allow for aquatic life movement during low flows. The dimension, pattern, and profile of the stream above and below a pipe or culvert shall not be modified by widening the stream channel or by reducing the depth of the stream in connection with the construction activity. The width, height, and gradient of a proposed culvert shall be such as to pass the average historical low flow and spring flow without adversely altering flow velocity. [15A NCAC 02H .0506(b)(2) and (c)(2)].

If bedrock is discovered during construction, then DWR shall be notified by phone or email within 24 hours of discovery.

Installation of culverts in wetlands shall ensure continuity of water movement and be designed to adequately accommodate high water or flood conditions.

The establishment of native woody vegetation and other soft stream bank stabilization techniques shall be used where practicable instead of riprap or other bank hardening methods.

16. Application of fertilizer to establish planted/seeded vegetation within disturbed riparian areas and/or wetlands shall be conducted at agronomic rates and shall comply with all other Federal, State and Local regulations. Fertilizer application shall be accomplished in a manner that minimizes the risk of contact between the fertilizer and surface waters. [15A NCAC 02B .0200 and 15A NCAC 02B .0231]
17. If concrete is used during construction, then all necessary measures shall be taken to prevent direct contact between uncured or curing concrete and waters of the state. Water that inadvertently contacts uncured concrete shall not be discharged to waters of the state. [15A NCAC 02B .0200]
18. No temporary impacts are allowed beyond those included in this Certification. All temporary fill and culverts shall be removed and the impacted area shall be returned to natural conditions within 60 calendar days after the temporary impact is no longer necessary. The impacted areas shall be restored to original grade, including each stream's original cross sectional dimensions, planform pattern, and longitudinal bed profile. All temporarily impacted sites shall be restored and stabilized with native vegetation. [15A NCAC 02H .0506(b)(2) and (c)(2)]
19. All proposed and approved temporary pipes/culverts/riprap pads etc. in streams shall be installed as outlined in the most recent edition of the *North Carolina Sediment and Erosion Control Planning and Design Manual* or the *North Carolina Surface Mining Manual* or the *North Carolina Department of Transportation Best Management Practices for Construction and Maintenance Activities* so as not to restrict stream flow or cause dis-equilibrium during use of this Certification. [15A NCAC 02H .0506(b)(2) and (c)(2)]
20. Any riprap required for proper culvert placement, stream stabilization, or restoration of temporarily disturbed areas shall be restricted to the area directly impacted by the approved construction activity. All riprap shall be buried and/or "keyed in" such that the original stream elevation and streambank contours are restored and maintained. Placement of riprap or other approved materials shall not result in de-stabilization of the stream bed or banks upstream or downstream of the area. [15A NCAC 02H .0506(b)(2)]
21. Any riprap used for stream stabilization shall be of a size and density to prevent movement by stream flows and shall consist of clean rock or masonry material free of debris or toxic pollutants. Riprap shall not be installed in the streambed except in specific areas required for velocity control and to ensure structural integrity of bank stabilization measures. [15A NCAC 02H .0506(b)(2)]
22. This Certification does not relieve the applicant of the responsibility to obtain all other required Federal, State, or Local approvals before proceeding with the project, including those required by, but not limited to Sediment and Erosion Control, Non-Discharge, Water Supply Watershed, and Trout Buffer regulations.
23. All mechanized equipment operated near surface waters shall be inspected and maintained regularly to prevent contamination of surface waters from fuels, lubricants, hydraulic fluids, or other toxic materials. Construction shall be staged in order to minimize the exposure of equipment to surface waters to the maximum extent practicable. Fueling, lubrication and general equipment maintenance

shall not take place within 50 feet of a waterbody or wetlands to prevent contamination by fuels and oils. [15A NCAC 02H .0506(b)(3) and (c)(3) and 15A NCAC 02B .0211 (12)]

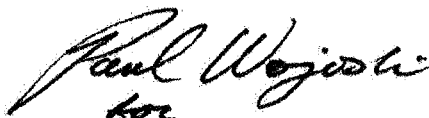
24. Heavy equipment working in wetlands shall be placed on mats or other measures shall be taken to minimize soil disturbance. [15A NCAC 02H .0506(b)(3) and (c)(3)]
25. In accordance with 143-215.85(b), the applicant shall report any petroleum spill of 25 gallons or more; any spill regardless of amount that causes a sheen on surface waters; any petroleum spill regardless of amount occurring within 100 feet of surface waters; and any petroleum spill less than 25 gallons that cannot be cleaned up within 24 hours.
26. Mr. Owen Schultz and Daniel Communities shall conduct construction activities in a manner consistent with State water quality standards (including any requirements resulting from compliance with section 303(d) of the Clean Water Act) and any other appropriate requirements of State and Federal law. [15A NCAC 02B .0200] If the Division determines that such standards or laws are not being met (including the failure to sustain a designated or achieved use) or that State or federal law is being violated, or that further conditions are necessary to assure compliance, the Division may reevaluate and modify this Certification. Before modifying the Certification, the Division shall notify Mr. Owen Schultz and Daniel Communities and the U.S. Army Corps of Engineers, provide public notice in accordance with 15A NCAC 02H .0503 and provide opportunity for public hearing in accordance with 15A NCAC 02H .0504. Any new or revised conditions shall be provided to Mr. Owen Schultz and Daniel Communities in writing, shall be provided to the U.S. Army Corps of Engineers for reference in any Permit issued pursuant to Section 404 of the Clean Water Act, and shall also become conditions of the 404 Permit for the project.
27. Upon completion of all permitted impacts included within the approval and any subsequent modifications, the applicant shall be required to return a certificate of completion (available on the DWR website <https://edocs.deq.nc.gov/Forms/Certificate-of-Completion>). [15A NCAC 02H .0502(f)]
28. If the property or project is sold or transferred, the new Permittee shall be given a copy of this Certification (and written authorization if applicable) and is responsible for complying with all conditions. [15A NCAC 02H .0501 and .0502]
29. This Certification neither grants nor affirms any property right, license, or privilege in any waters, or any right of use in any waters. This Certification does not authorize any person to interfere with the riparian rights, littoral rights, or water use rights of any other person and this Certification does not create any prescriptive right or any right of priority regarding any usage of water. This Certification shall not be interposed as a defense in any action respecting the determination of riparian or littoral rights or other rights to water use. No consumptive user is deemed by virtue of this Certification to possess any prescriptive or other right of priority with respect to any other consumptive user regardless of the quantity of the withdrawal or the date on which the withdrawal was initiated or expanded.



30. This Certification grants permission to the director, an authorized representative of the Director, or DENR staff, upon the presentation of proper credentials, to enter the property during normal business hours. [15A NCAC 02H .0502(e)]
31. Non-compliance with or violation of the conditions herein set forth by a specific project may result in revocation of this General Certification for the project and may also result in criminal and/or civil penalties.
32. The permittee shall report to the Asheville Regional Office any noncompliance with this Certification, any violation of stream or wetland standards [15A NCAC 02B .0200] including but not limited to sediment impacts, and any violation of state regulated riparian buffer rules [15A NCAC 02B .0200]. Information shall be provided orally within 24 hours (or the next business day if a weekend or holiday) from the time the applicant became aware of the circumstances. A written submission shall also be provided within 5 business days of the time the applicant becomes aware of the circumstances. The written submission shall contain a description of the noncompliance, and its causes; the period of noncompliance, including exact dates and times, if the noncompliance has not been corrected, the anticipated time compliance is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Division may waive the written submission requirement on a case-by-case basis.

This approval to proceed with your proposed impacts or to conduct impacts to waters as depicted in your application shall expire upon expiration of the 404 or CAMA Permit. The conditions in effect on the date of issuance shall remain in effect for the life of the project, regardless of the expiration date of this Certification. [15A NCAC 02H .0507(d)(2) and 15A NCAC 02H .0506]

This the 21<sup>st</sup> day of January 2020



Mac Haupt, Acting Supervisor  
401 & Buffer Permitting Branch

SLH

WQC004212